

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : SOOMRO, et al.
Serial No. : 10/556,010
Confirmation No. : 4562
Filing Date : November 8, 2005
Group Art Unit : 2416
Examiner : Jutai Kao
Attorney Docket No. : PHUS030115US

**APPEAL BRIEF
On Appeal from Group Art Unit 2416**

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Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed on May 18, 2009 and in response to the final Office action of February 18, 2009.

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I. REAL PARTY IN INTEREST

The real party in interest is Koninklijke Philips Electronics N.V., the assignee of record as indicated at Reel/Frame 017005/0477 and 017929/0490.

II. RELATED APPEALS AND INTERFERENCES

Appellant is not aware of any pending appeals, judicial proceedings, or interferences which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

- a) Claims 1, 7, 9, 11, 13, 15, 23, and 24 are pending at the time of filing the appeal brief.
- b) Claims 1 and 15 are independent.
- c) Claims 1, 7, 9, 11, 13, 15, 23, and 24 stand rejected and are the subject of this appeal.
- d) Claims 2-6, 8, 10, 12, 14, and 16-22 are cancelled.

IV. STATUS OF AMENDMENTS

The claims listed in section "VIII. Claims Appendix" of this Appeal Brief corresponds to the claims as submitted in Appellant's amendment filed November 14, 2008. No claim amendments have been submitted following the amendment of November 14, 2008, nor are any amendments pending.

V. SUMMARY OF CLAIMED SUBJECT MATTER

It should be explicitly noted that it is not the Appellant's intention that the currently claimed or described embodiments be limited to operation within the illustrative embodiments described below beyond what is required by the claim language. Further description of the illustrative embodiments are provided indicating portions of the claims which cover the illustrative embodiments merely for compliance with requirements of this appeal without intending to read any further interpreted limitations into the claims as presented.

The claimed invention, as recited in claim 1, is directed to a method for specifying measurement start times in a network Measurement Request Frame (page 3, lines 10-12), comprising the steps of: formatting the Measurement Request Frame to have a Measurement Request Elements field comprising at least one Measurement Request Element (page 8, lines 1-2), said at least one Measurement Request Element comprising at least one Measurement Request for a given type of network measurement (page 7, lines 4-5); and specifying an absolute Start Time in at least one of the Measurement Request Frame, the Measurement Request Element, and the Measurement Request (page 6, lines 12-14), wherein the absolute Start Time is set to zero to indicate that the corresponding measurement is to be initiated after reception of the Measurement Request Frame (page 7, lines 27-30).

The claimed invention, as recited in claim 15, is directed to an apparatus that formats a Measurement Request Frame having an unambiguous measurement Start Time (page 6, lines 9-11), comprising: a measurement acquisition circuit that formats the Measurement Request Frame to have a Measurement Request Elements field (page 7, lines 6-7) that comprises at least one Measurement Request Element that comprises at least one Measurement Request for a given type of network measurement (page 8, lines 1-5); a TSF timer (page 6, line 23); and a control

processor coupled to said measurement acquisition circuit and said TSF timer (page 6, line 29-page 7, line 4) and configured to set an absolute Start Time in at least one of the Measurement Request Frame, the Measurement Request Element, and the Measurement Request (page 6, lines 12-14), wherein the absolute Start Time is set to zero to indicate that the corresponding measurement is to be initiated after reception of the Measurement Request Frame (page 7, lines 27-30).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claim 1 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over Lappetelamen (US 6,671,495, hereinafter “Lappetelamen”) in view of Bates (US 6,732,142, hereinafter “Bates”).
- B. Whether claims 7 and 11 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over Lappetelamen and Bates as applied to claim 1, and further in view of Fishhaut (2008/0109513, hereinafter “Fishhaut”).
- C. Whether claims 9 and 13 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over Lappetelamen, Bates and Fishhaut as applied to claim 11, and further in view of Frederiksen (2003/0103491, hereinafter “Frederiksen”).
- D. Whether claims 15 and 24 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over Lappetelamen in view of Bates and Garg (2006/0171362, hereinafter “Garg”).
- E. Whether claim 23 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over Lappetelamen and Bates in view of Garg.
- F. The objections to the drawings, Figs. 3 and 4A-F, and the rejection to claim 9 under 35 U.S.C. 112 will be addressed subsequent to the disposition of this appeal.

VII. ARGUMENT

In the “Response to Arguments” section at page 2, the final Office action notes that a new search has been conducted. New references are cited to form the basis for alleged obviousness rejections set forth in the Office action. Appellants respectfully traverse the rejections in accordance with the detailed arguments set forth below.

A. Claim 1 is not properly rejected under 35 U.S.C. 103(a) as being unpatentable over Lappetelamen in view of Bates.

In re Wada and Murphy, Appeal 2007-3733, the BPAI stated that:

“When determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (*citing In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, “*there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)).”

It is respectfully submitted that the Examiner failed to establish a *prima facie* case of obviousness, because as discussed below, a suggestion of all limitations in the claims is lacking in Lappetelamen and Bates.

1. Claim 1

Appellants’ claim 1 defines a method for specifying measurement start times in a network Measurement Request Frame, and calls in part, for:

. . . wherein the absolute Start Time is set to zero to indicate that the corresponding measurement is to be initiated after reception of the Measurement Request Frame. Emphasis added.

The final Office action at page 5 admits that Lappetelamen does not disclose the feature of “wherein the absolute Start Time is set to zero to indicate that the corresponding measurement

is to be initiated after reception of the Measurement Request Frame,” as recited in Appellants’ claim 1, and relies on Bates as disclosing this feature. In page 5 of the final Office action, Bates at column 7, lines 1-3, is cited as teaching that the “start time field. . .may contain a suitable zero value. . .indicating that audio presentation is to begin immediately. . . .” The Office action alleges that the cited portion of Bates, when “incorporated into Lappetelamen’s invention, would represent the start of the measurement should start immediately after the reception of the frame.” Appellants respectfully disagree and submit that Bates, when incorporated into Lappetelamen, does not disclose, teach or even suggest the feature of “wherein the absolute Start Time is set to zero to indicate that the corresponding measurement is to be initiated after reception of the Measurement Request Frame,” as in Appellants’ claim 1.

Bates, at column 7, lines 1-3, apparently discloses a start time field may contain a zero value to indicate that an audio presentation is to begin immediately. At column 6, lines 35-48, Bates appears to teach generating a script 206 with specific parameters to enable a web user to specify parameters for audible presentation of certain web content. At column 6, lines 66-67, Bates seems to disclose the parameter “start time” is used to specify the time at which an audible presentation is to begin.

However, setting the start time to zero as disclosed by Bates is not the same or equivalent to the setting the absolute Start Time to zero as in Appellants’ claim 1. Appellants’ claimed invention relates to specifying a start time for taking measurements in wireless local area networks (WLAN). Appellants’ claim 1 requires “wherein the absolute Start Time is set to zero to indicate that the corresponding measurement is to be initiated after reception of the Measurement Request Frame.” In other words, for example, setting the absolute Start Time to zero indicates that the measurement is to be initiated after receiving the Measurement Request

Frame. In contrast to Appellants' claim 1, Bates apparently sets the start time parameter to zero to specify a time to begin an audio presentation of web content. Bates does not set the start time to zero to indicate that a measurement is to be initiated, as in Appellants' claim 1. Furthermore, Bates does not require that the measurement is to be initiated after receiving the Measurement Request Frame as in Appellants' claim 1. Thus, setting the start time to zero in Bates is not the same or equivalent to setting the absolute Start Time to zero in Appellants' claim 1. As such, Bates does not teach "wherein the absolute Start Time is set to zero to indicate that the corresponding measurement is to be initiated after reception of the Measurement Request Frame," as in Appellants' claim 1.

As pointed out above, the Office admits Lappetelamen does not disclose "wherein the absolute Start Time is set to zero to indicate that the corresponding measurement is to be initiated after reception of the Measurement Request Frame," as recited in Appellants' claim 1. Because Lappetelamen and Bates, separately or in combination, do not disclose or even suggest all limitations in the claim, Appellants respectfully submit that the Office has not presented a prima facie case of obviousness and as such, the rejection to independent claim 1 under 35 U.S.C. 103(a), is unfounded and should be reversed.

Furthermore, MPEP 2142 states:

"[r]ejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 R.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2c 1385, 1396 (2007) (quoting Federal Circuit statement with approval).

On the bottom of page 5 of the final Office Action the Office simply provides a conclusory statement that it would be obvious to one of ordinary skills in the art to modify the

system of Lappetelamen using features as taught by Bates in order to indicate an immediate start of the measurement.

The Office provides no reasoning whatsoever with regard to how one ordinarily skilled in the art would arrive at applicants' claimed invention considering the lack of teaching or suggestion of each and every feature of claim 1, as pointed out above. Appellants respectfully submit that these statements in the final Office action are merely conclusory with no support, nor suggestion in any of the references with regard to arriving at applicants' claimed invention.

KSR makes clear that rejections on obviousness cannot be sustained by mere conclusory statements; instead KSR requires that an Examiner provide "some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness." (KSR Opinion at p. 14). An Examiner must "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does," (KSR Opinion at p. 15). And, the Examiner must make "explicit" this rationale of "the apparent reason to combine the known elements in the fashion claimed," including a detailed explanation of "the effects of demands known to the design community or present in the marketplace" and "the background knowledge possessed by a person having ordinary skill in the art." (KSR Opinion at p. 14).

Applicant submits that the Office has not met any of the requirements of the MPEP or KSR and has not presented a prima facie case of obviousness. Therefore, the rejection should be withdrawn.

B. Claims 7 and 11 are not properly rejected under 35 U.S.C. 103(a) as being unpatentable over Lappetelamen and Bates, and further in view of Fishhaut.

2. Claims 7 and 11

Claims 7 and 11 ultimately depend from claim 1. Claims 7 and 11 incorporate by reference all of the features of the allowable parent claim. Furthermore, claims 7 and 11 include additional distinguishing features. For dependent claims 7 and 11 Appellants essentially repeat the above arguments from claim 1 and applies them to claims 7 and 11, respectively. Fishhaut does not cure the defects noted above with respect to claims 7 and 11. As such, Appellants respectfully submit that claims 7 and 11 are allowable at least by virtue of their dependency on allowable base claim 1 and that the rejection under 35 U.S.C. 103(a), is unfounded and should be reversed.

C. Claims 9 and 13 are not properly rejected under 35 U.S.C. 103(a) as being unpatentable over Lappetelamen, Bates and Fishhaut, and further in view of Frederiksen.

3. Claims 9 and 13

Claims 9 and 13 ultimately depend from claim 1. Dependent claims 9 and 13 incorporate by reference all of the features of the allowable parent claim. Furthermore, claims 9 and 13 include additional distinguishing features. For claims 9 and 13 Appellants essentially repeat the above arguments from claim 1 and applies them to claims 9 and 13, respectively. Fishhaut and Frederiksen do not cure the defect noted above with respect to claims 9 and 13. As such, Appellants respectfully submit that claims 9 and 13 are allowable at least by virtue of their dependency on allowable base claim 1 and that the rejection under 35 U.S.C. 103(a), is unfounded and should be reversed.

D. Claims 15 and 24 are not properly rejected under 35 U.S.C. 103(a) as being unpatentable over Lappetelamen in view of Bates and Garg.

4. Claim 15

Independent claim 15, although different from claim 1, includes several similar distinguishing features as discussed above with respect to claim 1. For example, claim 15 is directed to an apparatus that formats a Measurement Request Frame having an unambiguous measurement Start Time, while claim 1 is directed to a method.

Claim 15 recites in part: “a control processor coupled to said measurement acquisition circuit and said TSF timer and configured to set an absolute Start Time in at least one of the Measurement Request Frame, the Measurement Request Element, and the Measurement Request, wherein the absolute Start Time is set to zero to indicate that the corresponding measurement is to be initiated after reception of the Measurement Request Frame.”

The Office action uses substantially the same arguments as set forth with regard to claim 1, alleging that claim 15 is unpatentable over the combination of Lappetelamen, Bates and Garg. Appellants essentially repeat the above arguments for claim 1 and applies them to claim 15. Garg does not cure the defect noted above for claim 1, as applied to claim 15. As such, Appellants submit that the Office has not presented a *prima facie* case of obviousness and the rejection of independent claim 15 under 35 U.S.C. 103(a), is unfounded and should be reversed. As such, Appellants respectfully submit that claim 15 is in condition for allowance.

5. Claim 24

Claim 24 depends from independent claim 15 and incorporates by reference all of the features of the allowable parent claim. Furthermore, claim 24 includes additional distinguishing features. For claim 24, Appellants essentially repeat the above arguments from claim 15 and

applies them to dependent claim 24. As such, Appellants respectfully submit that claim 24 is allowable at least by virtue of its dependency on allowable base claim 15 and that the rejection under 35 U.S.C. 103(a), is unfounded and should be reversed.

E. Claim 23 is not properly rejected under 35 U.S.C. 103(a) as being unpatentable over Lappetelamen and Bates in view of Garg.

6. Claim 23

Claim 23 depends from independent claim 1 and incorporates by reference all of the features of the allowable parent claim. Furthermore, claim 23 includes additional distinguishing features. For claim 23, Appellants essentially repeat the above arguments from claim 1 and applies them dependent claim 23. Garg does not cure the defect noted above in claim 1, with respect to claim 23. As such, Appellants respectfully submit that claim 23 is allowable at least by virtue of its dependency on allowable base claim and that the rejection under 35 U.S.C. 103(a), is unfounded and should be reversed.

CONCLUSION

In light of the above, appellant respectfully submits that the rejection of claims 1, 7, 9, 11, 13, 15, 23, and 24 is in error, legally and factually, and must be reversed.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. (previously presented) A method for specifying measurement start times in a network Measurement Request Frame, comprising the steps of:

formatting the Measurement Request Frame to have a Measurement Request Elements field comprising at least one Measurement Request Element, said at least one Measurement Request Element comprising at least one Measurement Request for a given type of network measurement; and

specifying an absolute Start Time in at least one of the Measurement Request Frame, the Measurement Request Element, and the Measurement Request, wherein the absolute Start Time is set to zero to indicate that the corresponding measurement is to be initiated after reception of the Measurement Request Frame.

2 - 6. (canceled)

7. (previously presented) The method of claim 1, further comprising the step of setting a Measurement Mode field to a value that specifies how to interpret the absolute Start Time for starting measurement of the element.

8. (canceled)

9. (previously presented) The method of claim 7, wherein said setting step further comprises the step of using a three bit encoding to represent a selected indicator.

10. (canceled)

11. (previously presented) The method of claim 1, further comprising the steps of:

including in the at least one Measurement Request Element a Measurement Mode field; and

setting said Measurement Mode field to a value that specifies how to interpret the absolute Start Time for starting measurement of the element.

12. (canceled)

13. (previously presented) The method of claim 11, wherein said setting step further comprises using a three bit encoding to represent a selected indicator.

14. (canceled)

15. (previously presented) An apparatus that formats a Measurement Request Frame having an unambiguous measurement Start Time, comprising:

a measurement acquisition circuit that formats the Measurement Request Frame to have a Measurement Request Elements field that comprises at least one Measurement Request Element that comprises at least one Measurement Request for a given type of network measurement;

a TSF timer; and

a control processor coupled to said measurement acquisition circuit and said TSF timer and configured to set an absolute Start Time in at least one of the Measurement Request Frame, the Measurement Request Element, and the Measurement Request, wherein the absolute Start Time is set to zero to indicate that the corresponding measurement is to be initiated after reception of the Measurement Request Frame.

16 - 22. (canceled)

23. (previously presented) The method according to claim 1, wherein said absolute Start Time is based on a time synchronization function (TSF) timer value.

24. (previously presented) The apparatus according to claim 15, wherein said absolute Start Time is based on a time synchronization function (TSF) timer value.

IX. EVIDENCE APPENDIX

No evidence has been submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title nor any other evidence entered by the examiner and relied upon by appellant in the appeal.

X. RELATED PROCEEDINGS APPENDIX

Appellant is not aware of any appeals or interferences related to the present application.